IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI JUSTICE N.V. RAMANA

WRIT PETITION NO.25095 of 1997

Between:

1 Bheesetti Muthyalu Mahalakshmi alias Adari Mahalakshmi W/o late

Venkataswamy, Resident of 45-14-12, Akkayyapalem, Visakhapatnam
2 Adari (Venkataswamy) Subrahmanyam, Son of late Venkataswamy
Resident of 45-14-12, Akkayyapalem, Visakhapatnam.
3 Adari (Venkateswamy) Krishna Murthy Son of late Venkataswamy
Resident of 45-14-12, Akkayyapalem, Visakhapatnam

..... PETITIONERS

AND

1 Govt. of India, rep. by its Secretary, Ministry of Home Affairs

(Passports), New Delhi.
2 Govt. of A.P., rep. by its Secretary, Ministry of Home Dept.

(Passports), Secretariat Buildings, Hyderabad
3 The District Collector,
Visakhapatnam
4 The Commissioner of Police, Visakhaptanam.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue any Writ, Order or direction more particularly a writ in the nature of MANDAMUS declaring the action of the respondents 1 & 2 in not finalising the applications of the Petitioners seeking Citizenship as arbitrary, illegal and consequently direct issuance of Citizenship forthwith basing on the evidence produced, reports obtained and in accordance with the provisions of the Citizenship Act.

Counsel for the Petitioners: DR.P.B.VIJAY KUMAR

Counsel for the Respondent No.1: MR.S.S.VARMA (SC for CG)

Counsel for the Respondent Nos.2 to 4: GP for Home

The Court made the following:

ORDER:

By this writ petition, the petitioners, who are three in number, seek to issue a Mandamus declaring the action of respondents 1 and 2 in not disposing of their applications seeking Indian citizenship, as illegal and arbitrary, and consequently to direct the respondents to issue Indian citizenship to them forthwith.

Petitioner No.1 states that she and her late husband, by name Sri. Venkataswamy, are citizens of India by birth, and that they are having lands and a residential house at Visakhapatnam, and for eking out their livelihood, they migrated to Sri Lanka about 50 years ago. While they were residing in Sri Lanka, petitioner No.1 states that petitioner Nos. 2 and 3 were born to them at Baddullah Town, and due to ethnic problem, they returned to India during 1984, and are living in Visakhapatnam.

The petitioners state that immediately on their return to India, they made representations dated 18.11.1985 to respondent No.1 -Government of India requesting them to grant Indian Citizenship, which were forwarded to respondent No.2-Government of Andhra Pradesh, vide their proceedings No.1878/87-IC.II, dated 17.09.1987. The petitioners state that respondent No.2-Government of Andhra Pradesh, while forwarding their representations to respondent No.3-District Collector, Visakhapatnam, instructed the husband of petitioner No.1 to submit applications afresh in the prescribed pro-forma with all relevant documents. Accordingly, the petitioners state, that they submitted fresh applications dated 27.01.1988, in the prescribed pro-forma to respondent No.3-District Collector, Visakhapatnam, who in turn vide his proceedings in Rc.No.1586/87,C4, dated 12.02.1988 directed the Mandal Revenue Officer concerned, to inquire into the matter and submit a report. The petitioners state that though pursuant to the directions of respondent No.3-District Collector, Visakhapatnam, the Mandal Revenue Officer, conducted a detailed inquiry and submitted his report, no action

had been taken thereon by the respondents in the matter, in spite of their submitting numerous representations.

While so, the petitioners state that when the Superintendent of Police, Visakhapatnam, issued a notice dated 06.10.1987 directing the petitioners to leave the country immediately, they filed civil suits in O.S. Nos.1637 to 1640 of 1987 on the file of the I Additional District Munsif, Visakhapatnam, which were dismissed, observing that the only remedy available to the petitioners is to pursue with the authorities under the Citizenship Act, 1955. The petitioners state that due to ignorance of law, they filed appeal in A.S. No. 11 of 1993 on the file of the IV Additional District Judge, Visakhapatnam, who dismissed the same expressing the very same, as expressed by the trial Court. Hence, they filed the present writ petition.

Even though the writ petition was admitted in the year 1997, no counter affidavit was filed by the respondents, and only after this Court posted the matter finally to 5-4-2005 by administering a caution that if no counter is filed by that date, respondent Nos. 1 and 2 will have to appear before the Court and explain the reasons for not filing counter, that respondent No. 1 and respondent No. 2 filed separate counter-affidavits.

On behalf of respondent No.1-Government of India, the Director
(I & C), filed counter-affidavit denying the allegations of the petitioners. He stated that in the records available with them, they did not find the applications said to have been submitted by the petitioners for grant of citizenship, and that respondent No.2-Government of Andrha Pradesh, have also vide their letter dated 23.03.2000 confirmed that the petitioners have not submitted any application either to the District Collector, Visakhapatnam or to them. It is further stated that as per Rule 7 of the Citizenship Rules, 1956, the applicants seeking Indian citizenship, should apply to the District Collector, who in turn, in terms of Rule 9 thereof, transmit the same to the State Government for onward transmission to the Ministry of Home Affairs, Government of India. It is further stated that in the absence of any formal application from the State Government, it is not possible for the Government of India to take a decision in the matter.

He further stated that the application of the petitioners for Indian citizenship under Section 5(1)(a) of the Indian Citizenship Act, 1955 could be considered by the Government of India, if they receive the same from the State Government as per the

procedure prescribed in the Indian Citizenship Act, 1955 and the Indian Citizenship Rules, 1956 along with a copy of up to-date residential permit after regularizing their previous stay, if any, with a copy of valid Sri Lankan passport.

Contrary to the averments made by respondent No.1-Government of India, respondent No.2-Principal Secretary to Government of Andhra Pradesh, filed counter-affidavit stating that the representations made by the petitioners to the Government of India for grant of Indian citizenship were forwarded to respondent No.2-State Government, vide proceedings No.1878/87-IC.II, dated 17.09.1987, who in turn forwarded the same to respondent No.3-District Collector, calling for his report vide Memo No.2220/PPTs.A/87-2, dated 18.09.1987, and respondent No.3-District Collector, after calling for a report from the Mandal Revenue Officer concerned, submitted his report vide proceedings in Rc.No.1586/87.C4, dated 15.06.1988, to respondent No.2-State Government. A copy of the said report dated 15.06.1988 submitted by respondent No.3-District Collector to the State Government, is enclosed to the counter-affidavit.

Heard the learned counsel for the petitioners, the learned Central Government Standing Counsel for respondent No.1-Government of India and the learned Government Pleader for Home for respondent Nos.2 to 4.

The learned counsel for the petitioners submitted that petitioner No.1 and her late husband, namely Venkataswamy, belong to India and for eking out their livelihood, they migrated to Sri Lanka about 50 years back, and while they stay in Sri Lanka, petitioner Nos. 2 and 3 were born to them. Due to ethnic problem, they left Sri Lanka and returned to India. Immediately on their return to India, the husband and father of petitioner No.1 and petitioner Nos. 2 and 3, made representations dated 18.11.1985 to respondent No.1-Government of India, for grant of Indian Citizenship to them, which were forwarded to respondent No.2-State Government, who in turn called for a report from respondent No.3-District Collector, Viskakhapatnam, who having called for a detailed report from the Mandal Revenue Officer concerned, submitted his report dated 18.09.1987 to respondent No.2-Government, but in spite of submission of such report, no action has been taken in the matter by the respondents.

On the other hand, the learned Central Government Standing Counsel appearing for respondent No.1-Government of India, submitted that as per Rule 7 of

the Citizenship Rules, 1956 the petitioners should apply for Indian Citizenship to the District Collector, who in turn shall transmit the same to the State Government for onward transmission to the Ministry of Home Affairs, Government of India, and that as per the letter dated 23.03.2000 addressed by the State Government of Andhra Pradesh the petitioners have not submitted any application either to the District Collector, Visakhapatnam or to the State Government.

A perusal of the report dated 15.06.1988, submitted by respondent No.3-District Collector, Visakhapatnam to respondent No.2-State Government, coupled with the averments made by respondent No.2-State Government, in the counter affidavit filed on behalf of respondent Nos. 2 to 4, would make it clear that the petitioners filed applications in the prescribed pro-forma under Section 5(1)(a) of the Indian Citizenship Act, 1955 seeking to grant Indian Citizenship to them. On the basis of the said applications, respondent No.3-District Collector, Visakhapatnam, after calling for a detailed report from the Mandal Revenue Officer concerned, submitted his report dated 15.06.1988 to respondent No.2-State Government. But, the counter affidavit filed on behalf of respondent
Nos. 2 to 4 is silent as to what has happened subsequent to the submission of report by respondent No.3-District Collector, Visakhapatnam, to respondent No.2-State Government. Though respondent No.2-State Government received the report from respondent No.3-District Collector, Visakhapatnam, curiously, they have addressed a letter to respondent No.1-Government of India on 23.03.2000, stating that the petitioners have not submitted any application either to the District Collector, Visakhapatnam or to the State Government of Andhra Pradesh, which is contrary to the report submitted by respondent No.3-District Collector, Visakhapatnam and belies the stand taken by respondent No.2-State Government in the said letter.

Inasmuch as the report submitted by respondent No.3-District Collector, Visakhapatnam to respondent No.2-State Government, clearly discloses that the petitioners made applications for grant of Indian citizenship, and no action having been taken thereon by respondent
No.2-State Government subsequent thereto, and having regard to the stand taken by respondent No.1-Government of India, that they have not received any applications of the petitioners from respondent No.2-State Government, I deem it appropriate to dispose of the writ petition with the following directions:

Respondent No.2-State Government are directed to transmit the applications of the petitioners for grant of Indian citizenship, along with the report of respondent No.3-District Collector, Visakhapatnam, to respondent No.1-Government of India forthwith, and on receipt of the same, respondent No.1-Government of India, shall consider and pass appropriate orders on the applications of the petitioners in accordance with the provisions of Citizenship Act, 1955 and the Rules made thereunder, or any other law governing thereof, as expeditiously as possible. No order as to costs.

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N.V. RAMANA, J.

Date: 06.04.2005

Nsr/Ksr

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Secretary, Ministry of Home Affairs

(Passports), Govt. of India, New Delhi.
2 The Secretary, Ministry of Home Dept.

(Passports), Govt. of A.P., Secretariat Buildings, Hyderabad
3 The District Collector,
Visakhapatnam
4 The Commissioner of Police, Visakhaptanam.

5 Two CCs to GP for Home, High Court Buildings, Hyderabad (OUT)

6 Two CD copies